CASE No. _____

APPEAL No. 15-2052

USDC No. 3:13-cr-52-bbc

In re Scott Bodley-Petitioner/Appellant

PETITION FOR WRIT OF MANDAMUS AND FOR INJUNCTIVE RELIEF

TO THE UNITED STATES DISTRICT

FOR THE WESTERN DISTRICT OF WISCONSIN

PURSUANT

All Writs Act 28 U.S.C. 1651

Federal Rules of Appellate Procedure 21

Federal Rules of Criminal Procedure 1735(b)

28 U.S.C. 1291 & 1361

18 U.S.C. 1512(c)

Sent 1/18

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TABLE OF AUTHORITIES

COMES NOW, Scott Bodley, a layman, unrepresented, and acting on his own behalf. Haines v. Kerner, 409 US 519 (1972). Petitioner incorporates all previous filings as referenced herein.

Petitioner appears in the above entitled matter and requests this Honorable Court to command the district court clerk, the clerk of the appellate court,the district court reporter, the U.S. Attorney-Dan Graber, and others, and Judge Barbara B. Crabb to perform their duties and produce all documents requested herein.

Documents include, but are not limited to, the complete original appellate record, Daubert hearings and their associated transcripts, Rule 16 disclosures, Rule 27 documentation, and the documentation and order proving jurisdiction for docket no. 156.

Petitioner also seeks an injunction, enjoining the court reporter, both clerks of the district court and appellate court from further violations of the Federal Appellate Rules, Appellant's rights, and violations of Federal Criminal law.

STATEMENT OF JURISDICTION

Jurisdiction for this Writ is proper in this court pursuant to 28 U.S.C. 1291 to act in the pending appeal, and pursuant to the Federal Rules of Appellate Procedure Rule 21; and, pursuant to 28 U.S.C. 1651, the All Writs Act providing this court may issue any writs necessary in the aid of its jurisdiction; and, pursuant to 28 U.S.C. 1361 to compel an officer of the United States to perform their official duties; and, because Appellant is initiating a new proceeding acting pro se and on his own behalf.

Therefore, Appellant is not required to be represented by counsel for the purposes of this writ.

STATEMENT OF THE FACTS

1. Appellant was indicted on alleged violations of Federal Law. Specifically the basis and premise of the prosecutor's claims rest exclusively upon documents which Appellant contends do not and cannot actually exist.

2. The jurisdiction of the Federal District Court and the standing required by Article III of the Constitution, together with the Federal Rules of Evidence and Federal Criminal Rule 16 require the original, authenticated documents in question, the documents which purportedly created the case in controversy are missing from the official public records of this court, or have otherwise been made unavailable for use in both the criminal proceeding as well as the direct criminal appeal.

3. The record evidence and docket demonstrate that admission of substitute evidence or hearsay evidence related to the documents in question were not sought or obtained.

4. The Appellant requested to inspect and copy the documents in question pursuant to the requirements of Federal Criminal Rule 16. However, no such documents were ever provided or disclosed by the prosecutors, and the record is devoid of any suggestion of the required documents.

5. The Appellant requested disclosure of the Jencks Act material for preparation of a defense at trial, as provided in 18 U.S.C. 3500, however, not only is the record absent of any Jencks Act material, but also the record shows that the District Judge violated Jencks requirements and proceeded to trial absent the required material.

6. The Appellant challenged the admissability of purported expert witness testimony and exhibits. The record is absent the required Rule 16 disclosures, however, the District Judge failed or refused to conduct the required Daubert analysis or perform the gatekeeper duties required under Daubert and the Federal Rules of Evidence (F.R.E.) 701 et seq.

7. In the absence of the required documents in question; the required Daubert hearings and supported findings; the required Jencks Act material; and the required Brady material, the Appellant thus challenged the jurisdiciton of the district court to conduct the trial proceedings or indeed act in the case as the requirements under Article III clearly had not, and could not be met.

8. The District Judge failed to determine jurisdiction, or

resolve the jurisdictional challenge, but instead proceeded to the merits and trial proceedings under assumed, or manufactured, or hypothetical jurisdiction. Therefore, absent. a determination of jurisdiction and resolution of their jurisdictional challenge, all that remains is the hypothetical assumed and perhaps manufactured jurisdiction.

9. Although the District Judge abdicated her judicial duty, violated Jencks, Brady, Daubert and refused to determine jurisdiciton, the defendant was nevertheless able to preserve certain issues of error or misconduct for the record, and during the trial proceedings, and has also uncovered other issues during this post-conviction investigation.

10. Appellant timely filed a notice of appeal from the defective trial and ordered all transcripts of proceedings pursuant to the Criminal Justice Act. (CJA).

11. Even though this court issued an order that Attorney Timothy Baldwin contact Appellant immediately upon appointment in the appeal so as not to cause any delay, harm or prejudice to the appeal, Attorney Baldwin failed to contact Appellant immediately, or at all. It was not until Attorney Baldwin was forced to seek an extension of time in which to file the brief due to the missing transcripts that Baldwin informed Appellant, on a recorded call, that the appellate record was defective and insufficient to provide a meaningful review.

12. Upon learning the trial transcripts were missing and that the District Court had violated the Federal Rules of Appellate Procedure (F.R.A.P.) and the Transcript Management Plan (Plan), Appellant demanded appellate counsel immediately to obtain the official certified transcripts of all trial proceedings from the clerk of the District Court, particularly the proceedings indentifying substantial structural error and misconduct.

13. Unfortunately, Attorney Baldwin was unable to obtain the missing portions of the official court records, including the certified transcripts from either the court reporter or clerk.

14. In a sworn affidavit, Attorney Baldwin noticed the court that both the official, certified transcripts were not available from the court reporter, the district clerk, or notably "other various individual"; and that the court reporters act and the Federal Appellate rules clearly had been violated.

15. Appellant was not aware that random, unidentified individuals were authorized to maintain custody of official court records and certified transcripts. Notably, Attorney Baldwin was

unable to obtain the certified transcripts from either the district court or from this Honorable Court. Thus, he was forced to obtain uncertified transcripts of unknown origin, from "various other individuals" rather than the official, certified transcripts as required by Federal Appellate Rules.

16. Although appellate counsel, in his first appeal, seems to believe that random individuals were able to provide a record of sufficient completeness or fulfill the requirements of the Court Reporters Act and appellate rules, or the required duties of the clerk and reporters, he nevertheless was unable to obtain the official, certified transcripts from either the court reporter or the district court clerk. Thus demonstrating the violations of the rules, the insufficiency of the appellate record, and the necessity of this petition.

GROUNDS FOR THE WRIT

1. On or about May, 15, 2015, Appellant was indicted on various counts. See docket 2.

2. On or about August 5, 2014, prosecutors filed a notice of expert testimony noticing their intent to use expert testimony and/or reports pursuant to Rule 16 of the F.R.Cr.P. and Rule 702 of the F.R.E.. See docket 49.

3. On or about August 14, 2014, Appellant filed a request for discovery to obtain access to inspect and copy certain items of discovery pursuant to the government's disclosure obligations under Rule 16. See docket 53.

4. On or about November 25, 2014, prosecutors filed a supplemental notice of intent to use expert testimony. See docket 74.

5. On or about January 22, 2015, Appellant filed a motion seeking disclosure of certain grand jury materials pursuant to the mandates of the Jencks Act. See 18 U.S.C. 3500 and docket 145.

6. On or about January 28, 2015, Appellant challenged the subject matter jurisdiction of the District Court and challenged the authority of the District Judge to act in the case or conduct the trial proceedings. See docket 156.

7. The docket demonstrates the District Judge failed to resolve the jurisdictional defects, but instead proceeded to the merits under hypothetical jurisdiction as defined by the Supreme Court case Steel v. Citizens for Better Environment, 523 US 83, 89, 118 S.Ct. 1003, 140 L.Ed.2d 240. Courts have

too loosely conferred the jurisdiction label without certifying it on the record. Courts have a "virtually unflagging obligation to certify it on the record and refrain from sidestepping the issue. Moreover, the District Judge proceeded to trial in violation of the Jencks Act, in violation of Daubert, Rule 16, and her abdication of her judicial responsibilities. Or, in the alternative, the District Judge performed her judicial duties, and gatekeeper function, held the required Daubert hearings, provided the Jencks Act materials, and resolved the jurisdictional challenges, and certified the trial transcripts. But, then the clerk has corruptly altered, concealed, destroyed, or otherwise made the official court records unavailable for use in the judicial proceedings; and to prevent the Appellant from a meaningful review of his claims; and to his right to a record of sufficient completeness.

8. On February 6, 2015, the jury returned a verdict as guilty on all counts. See docket 171.

9. On February 9, 2015, the court reporter (L.S.) provided the clerk of the court portions of the trial transcripts held on February 6, 2015. See docket 175.

10. On May 13, 2015, Appellant filed a timely notice of appeal. See docket 194.

11. On May 22, 2015, transcripts were entered for the first and second day of trial by L.S.. See docket 203 and 204.

12. On May 22, 2015, a court reporter certification is entered. See docket 205.

13. On June 3, 2015, a transcript is entered for the third day of trial by L.S.. See docket 206.

14. On June 15, 2015, transcripts were entered by another court reporter, C.S.. See docket numbers 207-212. Note: These were entered past the mandatory 30 day window pursuant to the transcript management plan and there is also no entry of any more Court Reporter Certifications.

15. On July 28, 2015, Timothy Baldwin was assigned as Appellant's appellate attorney. (10 weeks after sentencing) See docket 213.

16. On December 23, 2015, Appellant receives a motion to withdraw and a sworn affidavit. See Exhibit A attached.

ARGUMENT

Mr. Baldwin's Affidavit

Mr. Baldwin's affidavit confirms misconduct, violations of the Federal Rules of Appellate Procedure and Federal law. See the following bullet points of Mr. Baldwin's affidavit:

1. No. 2: This is Mr. Baldwin's first appellate assignment.

2. No. 3: Why would Mr. Baldwin contact Mr. Duren and not the appellate court clerk? Why would Mr. Baldwin deviate from the transcript managment plan (Plan)?

3. No. 5: Why has Mr. Baldwin deviated from the Plan again? What and where are the now three (3) missing transcripts? Why are the missing transcripts unavailable from the reporter and clerk in violation of the F.R.A.P.?

4. Who are these "various other individuals" and why has the judge not intervened, according to protocol, due to the deviations of the Plan and the F.R.A.P.? See No. 6

5. No 10: This was a recorded call where Mr. Baldwin informs the Appellant that there are lost transcripts. Mr. Baldwin had informed Appellant's wife a week earlier of the same situation regarding lost transcripts. This same day, Appellant emailed and sent the information contained in Exhibit B, requiring the official, certified transcripts.

6. No. 11: Mr. Baldwin is still deviating from the Plan. Were these transcripts part of the certified appellate record? Why has he gone to the prosecutor? Where is the judge's intervention into this matter? Where are the court reporters, clerks and judge? NO one seems to be performing their official duties.

7. No. 12: Appellant has serious concerns now. Is this material relevant? Mr. Baldwin has NO first-hand knowledge of what happened at trial and has not contacted Appellant regarding any information to Appellant as directed..Are the "relevant trial materials and transcripts" certified and the true, original appellate record? Do these materials contain the Daubert hearings and their transcripts, Jencks Act materials, Rule 16 disclosures, Rule 27 documentation and the judge's ruling on docket 156's motion determining jurisdiction? Is the record sufficiently complete under Griffin, Mayer and Draper?

Due to the inordinate delays, the initial briefing schedule has been missed, causing more harm and prejudice to Appellant, and to this date, Mr. Baldwin has not contacted Appellant to acquire

any detailed information that may be appealable.

TRANSCRIPT MANAGEMENT PLAN (Plan)

According to the Judicial Council, each circuit must have an appellate transcript managment plan (Plan). This Plan includes a position called a "District Court Reporter Coordinator" (Coordinator). This Coordinator must be appointed within the district clerk's office and is responsible for:

a) monitoring the preparation and filing of transcripts and ensuring compliance with this Plan;

b) bringing to the attention of the clerk of court of appeals violations of this Plan, which cannot be resolved locally, and;

c) ensuring that communications are forwarded to and received by the appropriate parties.

Where there are multiple reporters responsible for a single transcript order, one must take the lead. The lead reporter must be an official court reporter.

When a transcript is being paid for under the Criminal Justice Act (CJA), the lead reporter must assist in obtaining the district judge's signature on the completed form CJA 24. If a transcript order form is incomplete or inaccurate, the lead reporter must give written notice of the deficiency to the ordering party with a copy to the appellate court..

According to the affidavit of Mr. Baldwin, he makes no mention of a lead court reporter (nor is there one demarcated on the docket) or the clerk of any court pursuant to the F.R.A.P. Rules 10, 11, and 12.

The following violations have or may have occured:

1. All relevant trial materials and transcripts are not originals, have not been certified or authernticated, that are in Mr. Baldwin's possession, nor in the Court's possession.

2. There are now unauthorized stipulations, and a defective appellate record.

3. Mr. Baldwin did not file a designation of the record.

4. Mr. Baldwin has never placed an order for any of the transcripts.

5. There have been unauthorized changes to the appellate record.

Appellant now requires, due to the fact that there are now "lost" transcripts as averred in Mr. Baldwin's sworn affidavit, the names of all parties involved to be ready for a hearing and requires from all parties, including but not limited to, an affidavit from Judge Barbara B. Crabb, from the lead court reporter and other court reporters (There are two court reporters on the docket, a L.S. and C.S.), the district court clerk, the appellate court clerk, Assistant U.S. Attorney(s), and the "various other individuals" to answer the following questions and provide all requested documentation.

1. Who was the Coordinator? Did the Coordinator monitor the preparation and filing of transcripts for case no. 3:13-cr-52-bbc?

2. Did the Coordinator ensure compliance of the Plan? If so, what were the documentation methods and where are the documents to support the compliance? Provide them.

3. Were there any violations of the Plan? If so, on what date was the first violation? If there are more than one violation, what dates did those violations occur? What are the violations?

4. Were communications of the violations sent and received by the appropriate parties? What were the dates of these communications and to whom were they sent?

5. Did the Coordinator obtain the judge's signature on every completed form CJA 24? Why did a magistrate and another judge sign a CJA 24? Provide certified copies.

6. Were the transcripts incomplete or inaccurate? If so, did the Coordinator give written notice of the deficiency to the ordering party, and a copy to the district court, to preserve the appellate record and protect Appellant's Constitutional rights? Provide full documentation.

7. Did the district judge intervene and supervise, implement a plan to correct any violations, and did she have a follow up protocol to ensure compliance? Provide all documentation, and that of the contingency plan.

All parties involved with the Planare required to submit affidavits that they ensured compliance of the Plan and protected Appellant's rights.

FEDERAL RULES OF APPELLATE PROCEDURE (F.R.A.P.) RULE 10

According to F.R.A.P. Rule 10, specific protocols were implemented to preserve a certified appellate record and protect an Appellant's Constitutional rights.

Pursuant to Rule 10(a), certain items constitute the record on appeal:

1. Original papers and exhibits filed in the district court.

2. The transcript of any proceedings, if any; and

3. a certified copy of the docket entries prepared by the district clerk.

According to the docket, there is no record that all original papers and exhibits filed in the district court were sent to the appellate court, and then forwarded to Mr. Baldwin. There are missing transcripts of proceedings, see docket nos. 133, 162, 165-170, and 190. there were no hearing held for docket nos. 117 and 118 (Jury voir dire and jury instructions hearing which Appellant

was excluded from), therefore no transcripts. Appellant's jury questions were never considered nor his jury voir dire. Hearings were denied Appellant, who was, and still is pro se in this case.

There is also no full documentation on the docket pursuant to F.R.A.P. Rule 10(b)(1).

SEVENTH CIRCUIT RULE 10

Pursuant to Circuit Rule 10(e), the clerk of the district court shall prepare within 14 days of filing the notice of appeal the original papers, transcripts filed in the district court and exhibits received or offered in evidence. The docket does not seem to reflect that this has been done.

Pursuant to Circuit Rule 10(b), there is no motion to correct or modify the record pursuant to F.R.A.P. Rule 10(e), yet, why was there an inordinate delay in acquiring the "missing transcripts".

Pursuant to Circuit Rule 10(c), there is no record on the docket that the transcripts have been certified or ordered by Mr. Baldwin.

F.R.A.P. RULE 11

Pursuant to Rule 11(b), there is no indication that this has been done according to the docket. Mr. Baldwin had to go elsewhere for the transcripts. It is now a fact, that the transcripts were not prepared properly which caused another inordinate delay and is now causing harm and prejudice to the Appellant.

Pursuant to Rule 11(b)(2), there is nothing on either docket that shows the district clerk had forwarded the transcripts to the appellate court.

This is corroberated by Mr. Baldwin's sworn affidavit that he

had to go elsewhere to get the transcripts, including "various other individuals".

These "various other individuals" are now of a great concern. Who are they? Are they public servants or do the courts contract out with private sector individuals or coporations for transcript services that the public is unaware of?

SEVENTH CIRCUIT RULE 11

According to the district court docket and the appellate court docket, due to the discrepancies in the Plan, 11(a), 11(b), and 11(c), were not complied with.

THE COURT REPORTERS ACT-28 U.S.C. 753

According to the docket, 753(b)(3), has not been complied with. As of the date of the writ, Appellant has sent three (3) requests to the district court and four (4) requests to the appellate court to produce documents for the Appellant under the CJA and has been stonewalled each time.

Also pursuant to this section, Appellant is proceeding under the CJA, is indigent, and upon request, may ask for any certified documentation, and the reporter or other individual designated to produce the record shall promptly transcribe the original records of the requested parts of the proceedings and attach to the transcript his official certificate, and deliver the same to the party or judge making the request.

Pursuant to this section, "The reporter or other designated individual shall promptly deliver to the clerk for the records of the court a certified copy of any transcript so made".

There is nothing on the docket that shows that this has been done. The presumption now of wrongdoings and attempting to cover up misconduct is becoming a prevalent theme and needs to be investigated by having a hearing so testimony may be given and also, an internal investigation should be commenced.

Also, "No transcripts of the proceedings of the court shall be considered as official except those made from the records certified by the reporter or other individuals designated to produce the record."

JUDICIAL NOTICE

The court takes judicial notice of the following:

A. Pursuant to F.R.Cr.P. 16(a)(1)(E), the Appellant has the right to inspect, copy or photograph any item that is within the government's possession, custody or control.

B. Pursuant to F.R.Cr.P. 16(a)(1)(G), requires that the government must give the defendant a written summary of any testimony that the government intends to use under F.R.E. 702, 703, or 705 during its case in chief at trial.

C. Pursuant to F.R.Cr.P. 16(a)(3), requires that defendant is provided access to all grand jury transcripts except discovery or recorded proceedings.

D. Federal Rules of Evidence (F.R.E.), requires that each expert must be qualified by the judge.

E. F.R.E. requires that all evidence must be authenticated.

F. F.R.E. 1002, requires all evidence be an original to prove its content.

G. F.R.Cr.P. 27 requires proof of an official record.

H. F.R.Cr.P. 55 requires the clerk of the district court must keep records of criminal proceedings and must enter every court order or judgment and the date of entry.

I. 28 U.S.C. 1731 requires proven handwriting exemplars.

J. 28 U.S.C. 2733 requires properly authenticated copies or transcripts of any books, records, papers or documents of any department or agency of the United States.

K. 28 U.S.C. 1734 describes the protocols for when court records are lost or destroyed.

L. 28 U.S.C. 1735(b) describes the protocols for the clerk of a court, U.S. Attorney and judge to follow when court records are lost or destroyed where the United States is a party.

M. 28 U.S.C. 1738 states that records and judicial proceedings or copies, are accepted in other courts provided they are attested by the clerk and seal of the court, together with a certificate of a judge of the court where the attestation comes form.

N. Daubert hearings must have been held as witnesses and expert witnesses gave testimony.

O. Jencks Act materials were generated as an indictment was issued.

P. The trial dockets of both courts were generated and items have been entered.

Q. Appellant is now in prison. Therefore, we can deduce the following:

1. Testimony was given at the grand jury and during trial.

2. Expert witness testimony was given at the grand jury and at trial.

3. Original documuments were presented to the petit jury to convict Appellant.

However, the record is devoid, which shows Appellant was given access to the original documents for inspection. The record is absent of any Daubert hearings and their associated transcripts. Upon evern closer scrutiny, there are numerous discrepancies throughout the docket, which are backed by behavior patterns and the sworn afidavit of Mr. Baldwin, that shows misconduct and wrongdoings.

In light of the fact that the reporters and both clerks of courts have not supplied the Appellant with any requested documents, it is now presumed that misconduct and wrongdoings have transpired by one or more individuals and that a cover-up has been commenced.

Therefore, the authority for this WRIT OF MANDAMUS states clearly, pursuant to 28 U.S.C. 1735(b), "Whenever the United States is interested in any lost or destroyed records of files of a court of the United States, the clerk of such court and the U.S. Attorney for the district shall take the steps necessary to restore such records or files, under the direction of the judges of such court".

Appellant understands the process now, of how this will be done at the district court level, but with the appellate court record now being deficient, Appellant will need this Honorable Court's guidance, due to their fiduciary responsibility to uphold the public trust, and Appellant's rights, to determine which judge will oversee the process in determining who, or what group of individuals, caused the record to be irrevocably deficient, causing harm and prejudice to the Appellant.

JURISDICTIONAL VIOLATION

It is well settled that jurisdiction may be challenged at any time...even on appeal. However, "When jurisdiction is challenged in a motion to dismiss, "the Plaintiff may not stand on his pleading but must, by affidavit or otherwise, set forth specific facts showing that the court has jurisdicitn." citations omitted. Reber v. Lab.Corp. of America, 2015 US Dist. LEXIS 153838 (U.S.D.C. 2015).

Every lower court has recognized that a federal court must satisfy itself of its jurisdiction, no matter how difficult, before reaching the meits of a case. Without jurisdiction, the court cannot proceed at all in any cause. Jurisdiction is the power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause. No court can assume jurisdiction for the purpose of deciding the merits of any case. All inferior courts must have both statutory and constitutional jurisdiction before it may decide a case on the merits.

Jurisdiction is NOT conferred by the stroke of a judge's or lawyer's pen. When challenged, it must be adequately founded in fact.

The "doctrine of hypothetical jurisdiction" is when a federal court is making the assumption that the court has jurisdiction under the Federal Constitution's Article III for the purpose of deciding the merits of a case. Hypothetical jurisdiction produces nothing more than a hypothetical judgment, which comes to the same thing as an "advisory opinion". Therefore, any appeal must be stopped so that the lower court can authenticate, in the first instance, jurisdiction.

Also, the Supreme Court has no tolerance of inferior courts endorsing the "doctrine of hypothetical jurisdiction". This doctrine carries the courts beyond the bounds of authorized judicial action and thus offends fundamental separation-of-powers principles.

In case after case, the Supreme Court has held that, without proper jurisdiction, a court cannot proceed at all. The court may note the jurisdictional defect and then must dismiss. See Steel Co. v. Citizens for Better Env., 140 L.Ed.2d 210, 523 US 83 101, 118 S.Ct. 1003, 140 L.Ed.2d 210 (1988).

Leibovitch v. Islamic Republic of Iran, 697 F.3d 551 (7th Cir. 2011) "Our concern is that a court may not presume hypothetical jurisdiction in order to decide a question on the merits." See Steel Co. V. Citizens for a Better Env." Case was reversed and remanded. See also Rawlins v. Select Specialty Hosp. of N.W. Ind., Inc., 2014 U.S. Dist. LEXIS 57076 (7th Cir. 2014).

The court takes judicial notice of docket 156. This jurisdictional challenged has not been ruled upon. The Western District of Wisconsin still has not put forth any documentation, sworn to under penalty of perjury by any court officer , that they hold jurisdiction in this case. The party asserting subject matter jurisdiction has the burden of proving its existence.

The question is not whether the district judge improperly determined the jurisdictional challenge, or abused her discretion when resolving the jurisdictional challenge, but instead, the issue presented here is the complete failure to ever determine jurisdiction in the first instance, and the refusal to resolve the jurisdictional challenge, and proceeding under hypothetical jurisdiction. Courts have too loosely conferred the jurisdiction label. A federal court has a "virtually unflagging obligation" to assert jurisdiction where it has that authority, and it is a

heinous act if the court attempts to sidestep it's judicial obligation to assert jurisdiction. Thus, this court may not resolve the jurisdictional challenge in light of the failure of the district judge to perform her official duty.

Finally, the district judge has avoided the obligations to determine jurisdiction, but instead proceeded to the merits under hypothetical juriscition, and rendered only "advisory opinions" and "hypothetical judgments".

INSUFFICIENT APPELLATE RECORD

Appellant has a Due Process and Equal Protection right to have a "record of sufficient completeness". In a long line of cases, the Supreme Court has affirmed and reaffirmed the principle that a State, having established a system of appellate review, may not opterate that system to a manner that discriminates against the indigent. See Griffin v. Illinois, 351 US 12, 76 S.Ct. 585, 100 L.Ed. 892 (1956); Draper v. Washington, 372 US 487, 83 S.Ct. 774, 9 L.Ed.2d 899 (1963); Mayer v. City of Chicago, 409 US 189, 92 S.Ct. 410, 30 L.Ed.2d 372 (1971). The Supreme Court also takes a very dim view of inferior courts who do not honor the doctrine of stare decisis.

Appellant has the aforementioned rights to have a complete appellate record so that his appeal will not become a "meaningless ritual". Before Appellant can have a meaningful appellate review, Appellant must have a complete record. Appellant has been continuously denied, and ignored at the district court level, from receiving any transcripts and documentation which Appellant has a right to pursuant to the CJA.

The record now reflects that there has been a serious and inordinate delay due to violations of the Plan and the F.R.A.P., which has now caused an inordinate delay affecting Appellant's rights to a speedy appellate review.

"What is impermissable under the Consitution is the total denail of a transcript without explanation. Draper, 372 US at 498; Eskridge v. Washington State Board of Prison Terms and Paroles, 353 US 214, 215, 78 S.Ct. 1061 2 L.Ed.2d 1269 (1958)." Robinson v. Frakes, 2011 US Dist. LEXIS 120621 (9th Cir. 2011).

Since Appellant's requests have been continuously ignored so many times now, Appellant can only construe, from this point forward, that the record has been tampered, sanitized, or otherwise made unavailable for use in this judicial proceeding, and there is now a cover up to hide misconduct by various parties.

The record also now reflects that unauthenticated documents were entered as evidence. Unauthenticated documents lack veracity and are entitled no deference. The Plaintiff never presented any evidence pursuant to Rule 901 or 1002 of the Federal Rules of Evidence, nor were they self authenticating documents under Rule 902.

Since Appellant never received these documents in his possession, or examined, and never saw the originals, the documents in question must be forgeries. Documents authenticated through personal knowledge must be attached to an affidavit signed by a person with personal, first-hand knowledge about the document.

F.R.E. 1002 requires the original documents in question. The limited circumstances under which substitute evidence is permissable are not applicable here, nor was the admission and reliance of substitute evidence even sought, much less authorized.

Moreover, if the original, authenticated, admissable documents in question, which were not only used in the case in chief, but indeed constitute the case in chief necessary to meet the requirements of Article III, are missing from the official court records of the court, or have otherwise been made unavailable for use in the judicial proceedings.

LOST EVIDENCE

In many cases, in which there is lost evidence or transcripts, it can be directly linked to a violation of some procedure.

The Supreme Court has long recognized the importance of preserving materally exculpatory evidence. Specifically, in California v. Trombetta, the U.S. Suprme Court held that law enforcement owed criminal defendants a duty, under the Due Process Clause of the Fourteenth Amendment, to preserve material evidence.

In so holding the Court reasoned that "criminal prosecutions must comport with prevailing notions of fundamental fairness." A prosecution is fundamentally fair when a defendant is "afforded a meaningful opportunity to present a complete defense. In Appellan'ts situation, that is now impossible to have a fundamentally fair appellate review.

In Arizona v. Younglood, the Supreme Court clarified that when the missing evidence is materially exculpatory, "the Due Process Clause of the Fourteenth Amendment, as interpreted in

Brady, makes the good or bad faith of the state irrelevant."

If evidence is destroyed in the contravention of an agency's policies, this can be evidence of bad faith. See U.S. v. Elliot, 83 F. Supp. 2d 637, 647 (E.D. Va. 1999).

Further, concealing the evidence that was destroyed is also evidence of bad faith. See Stuart v. Idaho, 127 Idaho 806, 816 (1996).

Being convicted in a case clouded by lost evidence violates the fundamental notion that all individuals are innocent until proven guilty beyond a reasonable doubt.

Since there were no experts who were authenticated pursuant to Daubert v. Merrell Dow, no expert testimony now would even be remotely reliable without the actual evidence available to be examined.

It is important to note that courts must realize that if they do not penalize the government for losing evidence, important evidence will continue to be lost and a loss of faith in the accuracy of the judicial system will result. Cherry picking evidence is not fundamentally fair and denies Due Process and Equal Protection.

RELIEF SOUGHT

Petitioner respectfully requests and demands the clerk of courts (District and Appellate) and the court reporters be commanded to do the following:

1. Enjoin the court reporters and court clerks from further violations of Federal law and their official duties;

2. Provide all original documents, transcripts, docket entries exhibits, orders, and Jencks Act and other materials constituting the record on appeal;

3. Disclose and turnover all Dauber Transcripts and supported findings as to the admissability of the expert witness testimony, opinions, reports and exhibits.

4. Mandamus the District Judge from acting in the absence of jurisdiction and to resolve the jurisdictional challenge and determine the jurisdiction of the district court in the first instance.

5. Mandamus the clerk to certify the entire, complete appellate record including all certified transcripts and immediately forward toe complete appellate record to the court of appeals and the appellant.

Respectfully submitted,

By: _____ 1/15/16
Scott Bodley Date

CERTIFICATE OF SERVICE

This certifies that I, Scott Bodley, on this date of _____, placed a true and correct copy of the "PETITION FOR WRIT OF MANDAMUS AND FOR INJUNCTIVE RELIEF" in the U.S. Mail, first class postage prepaid, which is deemed to be fuled at the time it was delivered to prison officials for the forwarding pursuant to the (mailbox Rule) Houston v. Lack, 101 L.Ed.2d 245 (1988) to the Clerk of Court, United States Court of Appeals for the Seventh Circuit, 219 S. Dearborn St., Chicago, IL 60604-1874. U.S.D.C. of Western WI, Attn: Barbara B. Crabb, 120 N. Henry St., Rm 320 Madison, WI 53703

JURAT

I, Scott Bodley, certify, pursuant to 28 U.S.C. 1746, that the statements contained herein are true, correct and verified to the best of my belief and knowledge, sworn to under penalty of perjury.

Respectfully submitted,

By: _____ 1/15/16
Scott Bodley Date

"EXHIBIT A - PAGE 1"

UNITED STATES COURT OF APPEALS
SEVENTH CIRCUIT

UNITED STATES OF AMERICA,	] Appeal from the United States
	] District Court for the Western
Plaintiff-Appellee,	] District of Wisconsin.
	] 3:13-cr-00052-bbc
No.: 15-2052	] Case No.: 3:13–cr–00052–bbc–1
	]
v.	] The Honorable Judge Case# now has a 1 attached use both from now on.
	] Barbara B. Crabb.
SCOTT BODLEY,	]
	]
Defendant-Appellant.	]

AFFIDAVIT OF TIMOTHY L. BALDWIN

STATE OF WISCONSIN)
ss.
MILWAUKEE COUNTY)

Timothy L. Baldwin, being first duly sworn, on oath deposes and says:

1. That I am an attorney licensed to practice law in the State of Wisconsin and in Seventh Circuit. Appellant was sentenced on May 12, 2015

2. That on July 27, 2015, Counsel was assigned to this case by the United States Court of Appeals for the Seventh Circuit, and that this is Counsel's first Seventh Circuit Appellate assignment. Has transcript management plan been followed? Does not look like it!!

3. That on August 31, 2015, Defendant-Appellant's previous standby Counsel, Attorney Christopher Duren, provided my office with access to some, but not all, of the trial materials and transcripts. why Chris Duren? He's out?! why not the court reporter? Why not the clerk of either District Court or Appellate Court.

4. That Counsel had scheduled his first telephone conference with the Defendant-Appellant for September 30, 2015; however, due to some apparent

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issue verifying Counsel's telephone number, the call was not put through, even though Counsel called from that same number scheduling the conference call on September 25, 2015.

was assigned 10/27/15, ? the delay? - 60+ days. did he on filing brief?

5. That upon review of the transcripts on October 2, 2015, it came to Counsel's attention that attorney Duren failed to provide Counsel with copies of three transcripts. Why not contact the recorder from District Court? Why not contact the Appellate Court for Certified Appellate Record?

6. That from October 2, 2015 until October 30, 2015, Counsel contacted Attorney Duren, along with various other individuals, in an attempt to receive copies of those three outstanding transcripts. Who are the various individuals? Which 3 transcripts?

7. That on October 5, 2015, Counsel had his first successful telephone conference with Defendant-Appellant.

8. That on October 13, 2015, Counsel sent follow-up correspondence to Defendant-Appellant, summarizing Defendant-Appellant's perceived appealable issues, and relaying that Counsel was awaiting additional trial materials in order to thoroughly evaluate the case.

9. That on November 6, 2015, Counsel sent a letter to Defendant-Appellant relaying that Counsel was in receipt of his October 30, 2015 letter, and that Counsel would further discuss his concerns over the case during the upcoming November 10, 2015 scheduled conference call.

10. That on November 10, 2015, Counsel and Defendant-Appellant had their second telephone conference concerning the case and potential issues that might warrant appeal.

How did the AUSA when they were not certified or on the docket?

Why transcripts from AUSA? Where is/are the certified Appellate record? Why is NO ONE talking to the clerks or record

(11.) That it was not until November 13, 2015 that Counsel received copies of the three aforementioned transcripts from the U.S. Assistant Attorney on this case.

Trial transcripts are not certified appellate record. The transcripts are unacceptable as they are not the certified Record!

(12.) That on November 24, 2015, Counsel sent correspondence to Defendant-Appellant, explaining that Counsel was in receipt of all relevant trial materials and transcripts; summarizing Counsel's evaluation, at that time, of three potential appealable issues; and expressing Counsel's request that Defendant-Appellant allow Counsel the opportunity to represent him on the legal issues that Counsel believes to be pertinent in his case.

what relevant trial materials + Transcripts? Daubert hearing Jencks Materials Rule 16 Disclosure Rule 27 Violation

13. That in that November 24, 2015 correspondence, the first issue outlined was whether Defendant-Appellant's charge and sentencing, in light of his preceding and corresponding actions amounting to "civil disobedience" against a government agency, might constitute an eighth amendment violation of cruel and unusual punishment, when such acts were merely an attempt to protect the governmental agency's authority.

14. That in that November 24, 2015 correspondence, the second issue outlined was whether Defendant-Appellant's sixth amendment right to an impartial jury might have been violated, in light of the nature of the crime at issue, and the politically-charged voir dire questioning in selecting an impartial jury.

15. That in that November 24, 2015 correspondence, the third issue outlined was whether there was substantial evidence to convict Defendant-

"EXHIBIT A - PAGE 3"

"EXHIBIT A-PAGE 4"

Appellant of Corruptly Endeavoring to Obstruct the IRS, when the IRS has an entire department charged with handling tax protestor cases in the normal and ordinary course of that department's duties.

16. That in light of the current political climate in which everyday Americans seek to challenge government actions based on their particular political beliefs, that Counsel believes that this particular case represents a fundamental right that should be of particular interest to the Court.

17. That given the Defendant-Appellant's adamant resistance to allow Counsel to present cognizant legal arguments for this Court to consider, which would impact not only this case, but the overall advancement of the law and the protections of citizenry, that Counsel requests that the Court grant Defendant-Appellant his request to proceed *pro se*, and that Counsel be permitted to submit an *amicus curiae* brief on the facts and circumstances in this matter.

Dated this 17th day of December, 2015.

TIMOTHY L. BALDWIN

Subscribed and sworn to before me
this 17th day of December, 2015.

Notary Public, State of Wisconsin
My commission: Expires July 8, 2017

ELIZABETH M. HERRICK NOTARY PUBLIC STATE OF WISCONSIN

"EXHIBIT B"

Dear Mr. Baldwin,

November 10, 5015.
12 Noon

This will confirm our conversation of this date, wherein you advised me that the trial transcripts have been confirmed irrevocablly lost, and cannot be provided to either the appeals court, or to me, as the appellant.

These facts cause great concern due to material issues which are necessary to adequate and meaningful review of the trial process, and my ability to effectively raise those issues of substantial error.

The issues of perjury, false statements, jury instructions, and prosecutor misconduct, particularly in the closing arguments are now meaningless for appellate review, and my rights to a speedy and meaningful appeal are now, forever lost.

To be clear, I am not interested in any purported transcripts or other alleged portions of the record which may be in the possession of the prosecution, nor am I interested in stipulating to any documents, transcripts or other portions of the record, which may be provided by the prosecution.

Further, please consider this letter as formal instruction that you not obtain, or attempt to obtain any transcripts or portions of the record from any source, other than the official, certified transcripts from the District Court, pursuant to the Federal Rules of Appellate Procedure, Specifically, but not limited to Rules 10, 11, and 12.

Moreover, you are hereby instructed to move the appellate court to remand with instructions to dismiss in light of the missing, material portions of the record, including the trial transcripts, pursuant to the authority in Griffin v. Illinois, Draper v. Washington, and Mayer v. Chicago.

I believe such a motion would qualify as an emergency motions under the circumstances, and qualify for immediate dismissal based on the absence of the ~~trail~~ Trial SB transcripts, and the above authority.

In any event, your prompt action, and expedited ruling are hereby demanded.

Respectfully,

Scott Bodley - 73270051
F.P.C. - LaTuna
P.O. Box 8000
Anthony, N.M. 88021

Certified Mail # 7000-1670-0009-4295-6174

Houston v. Lack - Mailbox Rule